

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, ex rel., and  
FLFMC, LLC,

Plaintiffs,

10cv0435

**ELECTRONICALLY FILED**

v.

WHAM-O, INC.,

Defendant.

**ORDER OF COURT**

On August 3, 2010, this Court issued a Memorandum Opinion (Doc. No. 28) and Order of Court (Doc. No. 29) granting Defendant's Motion to Dismiss and entering Summary Judgment in favor of Defendant. On September 14, 2010, this Court entered a Text-Only Order which denied plaintiff's timely Motion for Reconsideration as premature, without prejudice. Plaintiff has until October 14, 2010, to appeal the Court's Orders. Fed.R.App. 4(a)(4)(A)(iv).

Plaintiff now has filed a Motion To Stay Proceedings (Doc. No. 33), requesting this Court stay the proceedings indefinitely pending further review of the decision issued by a panel of the Court of Appeals for the Federal Circuit in Stauffer v. Brooks Brothers, Inc., \_\_\_ F.3d \_\_\_, 2010 WL 3397419 (Fed. Cir. August 31, 2010). The Court agrees with defendant that a district court has no authority under the Rules of Civil Procedure to "stay" a case that has been dismissed and closed and is ripe for appeal.

However, it is within authority of a district court to grant a motion to enlarge the time for filing an appeal pursuant to Fed.R.App.4(a)(5), which provides in relevant part: "(A) The district court may extend the time to file a notice of appeal if: (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and (ii) regardless of whether its motion is filed

before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.” Because the time prescribed by Rule 4(a) has not expired, and because plaintiff has shown good cause<sup>1</sup> for an extension of time, the Court will deem plaintiff’s motion to stay as a motion to enlarge time pursuant to Fed.R.App. 4(a)(5)(A), and will grant the motion.

Pursuant to Fed.R.App. 4(a)(6), “[n]o extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.” The Court will enlarge the time for appeal for 30 days beyond October 14, 2010, until November 13, 2010. Accordingly,

AND NOW, this 29<sup>th</sup> day of September, 2010, Plaintiff’s Motion to Stay is deemed to be a Motion To Enlarge The Time For Filing An Appeal Pursuant to Fed.R.App.4(a)(5)(A), and so-deemed, is HEREBY GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that the time for filing an appeal is enlarged until November 13, 2010.

s/ Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc: all ECF Registered Counsel

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1 Plaintiff requests the stay “to ensure that this Honorable Court maintains jurisdiction pending any further review of Stauffer, and, consistent with the goal of judicial economy, to avoid the time and expense associated with pursuit of FLFMC's appellate rights.” Motion to Stay at ¶ 5. While granting this motion to enlarge time to appeal will not maintain this Court’s jurisdiction, the additional time within which the Stauffer decision might become final is consistent with the goal of judicial economy, to avoid the time and expense associated with a full blown appeal.